**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**O.O.C.J.**

**COMPANY PETITION NO. 322 OF 2002**

Enereff Engineers Pvt.Ltd. ... Petitioners.

V/s.

SVC Superchem Ltd. ... Respondents.

....

Mr. Harvinder Toor i/b. Sanjay Sinha for the Petitioners.
Mr. A.G. Damle for the Respondent.

....

**CORAM : DR. D.Y.CHANDRACHUD,J.**

**26th April 2007.**

**P.C. :**

. From the material on the record, it is not possible for the Court to discern that there is any debt due and payable, so as to justify an order in the exercise of the jurisdiction to wind up a company. The reply to the statutory notice remitted by the Respondent on 15th May 2001 raises substantial defences. Though Counsel appearing on behalf of the Petitioner drew the attention of the Court to the letters of the Respondent dated 8th May 1999, 17th June 1999 and 21st July 1999 (Exhibits G1, G3 and G4), the material on record does not support the conclusion that a debt in the

amount of Rs.13.80 lakhs (admittedly the reference to the amount being Rs.13.80 crores in the particulars of claim is an inadvertent error) is crystalised.

2. In the circumstances, the Petitioner would have to be relegated to its remedy of instituting a suit in the recovery of its dues where the claim will have to be established on the basis of evidence adduced at the trial. In fact the Court has been informed that a suit has been filed by the Petitioner subsequent to the institution of the Petition. It is clarified that the observations contained in this order shall not come in the way of the trial of the suit.

3. The Company Petition is accordingly dismissed.

---